ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOSEPHINE LINKER HART, JUDGE

DIVISION III

CA06-152

JERRI MICHELLE CLEMMERSON

June 13, 2007

APPELLANT

V.

APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT

ARKANSAS DEPARTMENT OF HUMAN SERVICES

[NO. JN-2005-890]

HON. JOYCE WILLIAMS WARREN, CIRCUIT JUDGE

APPELLEE

REBRIEFING ORDERED

This appeal is once more before us. First, Jerri Michelle Clemmerson's counsel attempted to submit a brief that did not conform with Arkansas Supreme Court and Court of Appeals Rule 4-2, and it was rejected by the Clerk of this court. Clemmerson's counsel then filed a motion requesting that we accept the brief with its deficiencies, which we denied. A brief was subsequently submitted in no-merit format in accordance with the dictates of *Linker-Flores v. Arkansas Department of Human Services*, 359 Ark. 131,194 S.W.3d 739 (2004), and Ark. Sup.Ct. R. 4-3(j)(1), that purported to identify and explain why all the adverse rulings made against Clemmerson would not support a non-frivolous appeal. In an unpublished opinion handed down on September 20, 2006, we ordered rebriefing because Clemmerson's attorney failed to identify and discuss all the adverse rulings. Also, we strongly

recommended that Clemmerson's counsel consider the issue of Clemmerson's disability as the basis for a merit brief. Clemmerson's counsel declined to follow our recommendation.

Clemmerson's counsel has once again filed a no-merit appeal from an order of the Pulaski County Circuit Court terminating Clemmerson's parental rights to her son A.C., born April 6, 2005. Consistent with the dictates of *Linker-Flores v. Arkansas Department of Human Services*, *supra*, and Ark. Sup.Ct. R. 4-3(j)(1), Clemmerson was provided a copy of counsel's brief, and she has filed pro se points for reversal pursuant to Ark. Sup.Ct. R. 4-3(j)(2). Despite the fact that Clemmerson has filed pro se points, Arkansas Department of Human Services (DHS) has not filed a brief in response. We again find the brief submitted by Clemmerson's counsel to be unsatisfactory. For the reasons stated below, we order that this case be rebriefed in merit format.

Regarding the rejection by Clemmerson's attorney of our suggestion that Clemmerson's disability be considered as a basis for an appeal in a merit brief, she asserted that the issue was not preserved for review. She purports to rely on *Lewis v. Arkansas Department of Human Services*, 364 Ark. 243,217 S.W.3d 788 (2005), a companion case to *Linker Flores* II, which held that no-merit briefs in termination-of-parental-rights cases need not discuss final orders that have not previously been appealed. We hold, however, that her reliance on *Lewis* is misplaced.

The finding by the trial court that Clemmerson did not have a "disability that would prevent her from performing a major life activity" was made in an order styled "ORDER FOR NO REUNIFICATION SERVICES." Clearly, this is an "intermediate order" that would not be appealable without certification pursuant to Rule 54(b) of the Arkansas Rules

of Civil Procedure. Ark. Sup. Ct. R. 6-9. There was no certification by the trial court, so the final termination order necessarily "brings up for review any intermediate order involving the merits and necessarily involving the judgment." Ark. Sup. Ct. R. 2(b). While we are mindful that there is some language in *Lewis* that might raise a question as to whether appeal of the above-referenced order may have been waived for the purposes of a no-merit appeal, we note that subsequent to *Lewis* being handed down on November 17, 2005, the supreme court made effective on July 1, 2006, the new Arkansas Supreme Court Rule 6-9, quoted above, which specifically deals with this issue. Moreover, *Lewis* simply addresses the scope of review in *no-merit* appeals. Our previous opinion in the instant case recommended that the issue be re-examined and considered for briefing in *merit* format. We are unsatisfied that adequate consideration of our strong recommendation has taken place or that Clemmerson's counsel has fully taken into account the new rule promulgated by our supreme court. We therefore order that this issue be briefed in merit format.

Our decision today also takes into account that, despite previously ordering rebriefing, Clemmerson's counsel still has not identified and discussed all of the adverse rulings and provided an adequate discussion of all the issues that she has identified. Specifically, we note that Clemmerson's counsel has not discussed the denial of her motion for visitation. Additionally, we find inadequate her discussion concerning the denial of a motion for continuance made by trial counsel and joined by the attorney ad litem, that Clemmerson be given a psychological evaluation. We reject Clemmerson's counsel's characterization of the request as one for reunification services. We interpret the request as an effort to ascertain

Clemmerson's competence to assist her counsel which, in the context of termination-of-parental-rights hearings, necessarily involves testifying.

In this state, appellants have a constitutional right to an appeal. Ark. Const. Am. 80 § 11; *see also Linker-Flores v. Arkansas Dep't of Human Servs.,* 356 Ark. 369, 149 S.W.3d 884 (2004). It is our duty to zealously guard the rights of appellants, and we have consistently held that we will not allow an attorney to withdraw from representation after the filing of a no-merit brief unless he or she strictly complies with the dictates of *Linker-Flores* II and Arkansas Supreme Court and Court of Appeals Rule 4-3. We hold that Clemmerson's counsel has not satisfied these requirements.

Rebriefing ordered.

GRIFFEN and GLOVER, JJ., agree.